

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**  
**ENERGY DIVISION**  
**I. D. # 5451**  
**RESOLUTION E-3981**  
**April 13, 2006**

**R E S O L U T I O N**

Resolution E-3981. Southern California Edison (SCE) requests confirmation that costs incurred by SCE pursuant to a standstill agreement entered into with Peabody Western Coal Company (Peabody) and the Black Mesa Pipeline Company are fuel-related costs that can be recorded directly into the Energy Resource Recovery Account (ERRA) balancing account.

By Advice Letter 1952-E Filed on December 29, 2005.

---

**SUMMARY**

**SCE may record, with limits, standstill costs to the ERRA balancing account.**

This Resolution confirms Energy Division's concurrence with Southern California Edison that recording standstill agreement costs to the ERRA balancing account is appropriate.

Limits in time and money are established in recognition that ratepayers are at risk while SCE negotiates to reopen Mohave. SCE should be prepared to demonstrate that it exercised reasonable due diligence and negotiated in good faith to modify the pollution control requirements in order to recover the standstill cost in rates.

**BACKGROUND**

**SCE is in discussion to maintain its coal fuel supply while efforts are made to reopen Mohave.**

On December 31, 2005, Mohave Generating Station (Mohave) a two-unit, coal fired power plant located in Laughlin, Nevada, shut down operations. Mohave's coal supply contract with Peabody also expired at the end of 2005.

SCE is currently seeking to preserve the option for continued coal operations at Mohave. In conjunction with that effort, SCE is in discussions with Peabody for a temporary agreement in which Peabody would maintain the Black Mesa Mine in sufficient readiness so as to permit a timely return to production if SCE's effort for continued coal operations of Mohave is successful.

**SCE plans to record standstill agreement costs directly to the ERRA balancing account.**

SCE believes that recording the standstill agreement costs directly to the ERRA balancing account is appropriate since this ratemaking treatment is consistent with SCE's currently effective Commission-approved ERRA tariff which authorizes Utility Retained Generation (URG) Fuel and Fuel-related Expenses to be recorded in the ERRA balancing account as they are incurred.

SCE's URG Fuel and Fuel-related Expenses are defined in SCE's ERRA tariff as: (1) variable fuel expenses (commodity and fuel transportation), (2) fixed (unavoidable) fuel expenses, (3) fuel inventory carrying charges, (4) fuel contract settlement, buy-out, and renegotiation costs, and (5) other costs as approved by the Commission.

**The standstill arrangement is similar to the activities contemplated in the ERRA forecast proceeding.**

SCE believes that these activities are analogous to the activities contemplated in SCE's 2006 ERRA forecast of operations proceeding (A.05-08-002). While that forecast assumed that Mohave would be temporarily shut down during 2006, SCE identified costs necessary to maintain or preserve the Black Mesa Mine coal supply. No party opposed SCE's ERRA proceeding revenue requirement. The standstill arrangement is similar to the activities contemplated in the ERRA forecast.

**Standstill agreement costs will be subject to reasonableness review.**

Like any other fuel-related costs recorded in the ERRA balancing account, SCE's actual fuel-related standstill agreement costs will be subject to full review by the Commission and other interested parties in SCE's annual ERRA reasonableness of operations proceeding.

**SCE seeks confirmation that Energy Division concurs in its treatment of the standstill agreement costs.**

SCE is filing AL 1952-E to clarify that costs that SCE may incur according to a standstill agreement are fuel-related costs that can be recorded directly to the ERRRA balancing account.

**NOTICE**

Notice of AL 1952-E was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed in accordance with Section III-G of General Order 96-A.

**PROTESTS**

Advice Letter AL 1952-E was protested.

SCE's Advice Letter AL 1952-E was timely protested by The Natural Resources Defense Council (NRDC) on January 18, 2006.

**NRDC protests that SCE did not recognize, and request funding for, generation alternatives to Mohave**

NRDC filed protests to AL 1952-E, and AL 1953-E (also related to Mohave) in the same letter. NRDC protests that SCE's advice letters do not recognize generation alternatives to Mohave and that SCE should request funds to pursue development of the alternatives identified in a forthcoming final study. NRDC also suggests that the CPUC should be mindful of the long-term effects associated with greenhouse gas emissions that are associated with a return to operation of Mohave.

SCE responded to NRDC's protest on January 25, 2006.

**SCE's response to NRDC's protest is discussed in Resolution E-3977 for AL 1953-E.**

NRDC's protest does not relate to SCE recording standstill agreement costs to the ERRRA balancing account, the subject of AL 1952-E, and this Resolution. NRDC's

protest concern general issues surrounding continued Mohave operations. SCE's response to NRDC's protest is addressed in Resolution E-3977 for AL 1953-E.

## **DISCUSSION**

Energy Division agrees that recording standstill agreement cost to the ERRA balancing account while SCE negotiates to reopen Mohave is appropriate. Costs incurred while SCE negotiates will be capped.

### **ERRA balancing account records URG fuel and fuel-related expenses.**

Decision 02-10-062 established the ERRA balancing account. The purpose of the ERRA is, among other things, to record SCE's URG fuel costs. URG includes all of SCE's generating facilities, including its ownership share of Mohave. SCE's URG fuel and fuel-related expenses include:

- Variable fuel expenses (commodity and fuel transportation);
- Fixed (unavoidable) fuel expenses;
- Fuel inventory carry charges;
- Fuel contract settlement, buyout, and renegotiation costs;
- And other costs as approved by the Commission.

### **The standstill agreement cost is fuel-related.**

On December 31, 2005, SCE shut down operations at Mohave due to emission control requirements. SCE's coal fuel contract with Peabody also terminated on that date. While negotiating to resume operations at Mohave, SCE entered into an interim standstill agreement with Peabody to preserve its coal fuel supply. Over the terms of the interim standstill agreement, SCE will negotiate a definitive agreement with Peabody for the continued coal operation and suspension. For the purposes of this Resolution, the costs incurred under the interim standstill agreement and the definitive agreement are considered to be standstill agreement costs.

The standstill agreement cost, (the interim standstill agreement and the definitive agreement), is fuel-related. As such, it is appropriate to record the standstill agreement costs in the ERRA balancing account.

**Mohave fuel-related expenses recorded to the ERRA balancing account are capped in time and money.**

Resumption of operation at Mohave is uncertain. SCE's current efforts to negotiate resumed operations of Mohave, without installation of pollution control equipment, have yet to succeed. This raises concern that the standstill agreement costs will be squandered if SCE fails to obtain the necessary concessions to operate Mohave within a reasonable time.

As such, it is prudent for the Commission to establish both a monetary and time limit. SCE may record in the ERRRA balancing account, an amount up to four times its share of the interim standstill agreement costs entered into with Peabody as of December 29, 2005. SCE is only authorized to incur standstill agreement costs until December 31, 2006.

Four times SCE's share of the interim standstill agreement costs and a 12 month time period is a reasonable ceiling for SCE. The 12 month limit provides a reasonable period to negotiate, while also allowing the standstill costs booked to the ERRRA to be reviewed during SCE's annual ERRRA reasonableness of operations application.

**Recovery of standstill agreement costs is subject to Commission review in SCE's annual ERRRA reasonableness of operations proceeding.**

Standstill agreement costs recorded in the ERRRA will be subject to a reasonableness review before SCE can recover the recorded costs. SCE should request recovery in its annual ERRRA reasonableness of operations proceeding.

**SCE must demonstrate that the standstill agreement costs were reasonably incurred.**

In its application to justify recovery in rates of standstill agreement costs, SCE should be prepared to demonstrate that, while the standstill agreement was in effect, SCE exercised reasonable due diligence and negotiated in good faith to modify the pollution control requirements. SCE's demonstrations should include, at a minimum, renegotiation meeting agendas, minutes, and change in term proposals.

**NRDC's protest is not related to standstill agreement costs.**

NRDC filed its protest to AL 1952-E and AL 1953-E in the same letter. NRDC's protest does not address the specific question of whether the standstill agreement costs should be recorded to the ERRA balancing account. As noted in Resolution E-3977-E to AL 1953-E, NRDC's concerns and comments may be better addressed in future Mohave proceedings that are broader in scope. NRDC's protest is denied.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments. This draft resolution will be placed on the Commission's agenda for the April 13, 2006 meeting.

## **FINDINGS**

1. D.02-10-062 established the Energy Resource Recovery Account (ERRA) balancing account.
2. The purpose of the ERRA is, among other things, to record SCE's Utility Retained Generation (URG) fuel costs.
3. URG includes all of SCE's generating facilities, including its ownership share of Mohave.
4. SCE URG fuel and fuel-related expenses include:
  - Variable fuel expenses (commodity and fuel transportation);
  - Fixed (unavoidable) fuel expenses;
  - Fuel inventory carry charges;
  - Fuel contract settlement, buyout, and renegotiation costs;
  - And other costs as approved by the Commission.
5. SCE shut down operations at Mohave on December 31, 2005.
6. SCE's coal fuel supply contract with Peabody Western Coal Company (Peabody) terminated on December 31, 2005.
7. SCE entered into an interim standstill agreement with Peabody to preserve its coal fuel supply while negotiating to resume operations at Mohave.

8. SCE is negotiating with Peabody for a definitive coal operations and suspension agreement during the terms of the interim standstill agreement.
9. SCE filed AL 1952-E on December 29, 2005 requesting authorization to record interim standstill agreement costs in the ERRA balancing account.
10. During the terms of the interim standstill agreement with Peabody, SCE will negotiate a definitive agreement with Peabody for the continued coal operation suspension.
11. The Natural Resources Defense Council (NRDC) timely protested SCE's Advice Letter 1952-E on January 18, 2006.
12. SCE responded to NRDC on January 25, 2006.
13. The standstill agreement, including the definitive agreement, is fuel-related.
14. Energy Division concurs that it is appropriate to record the standstill agreement cost in the ERRA balancing account.
15. Resumption of operation at Mohave is uncertain.
16. There is concern that the standstill agreement costs will be squandered if SCE fails to obtain the necessary concession to operate Mohave within a reasonable time.
17. It is prudent for the Commission to establish limits on the amount of standstill agreement costs that SCE may record to the ERRA.

**THEREFORE IT IS ORDERED THAT:**

1. The request of the Southern California Edison (SCE) for confirmation that the Energy Division concurs with SCE's recordation of standstill costs to the Energy Resource Recovery Account (ERRA) as requested in Advice Letter AL 1952-E is approved, as modified in Ordering Paragraph 3, 4, and 6.
2. Energy Division concurs with recording interim standstill agreement costs, and the definitive agreement costs, (collectively identified as standstill costs or standstill agreement costs) to the ERRA balancing account, subject to time and cost limitations.
3. SCE may record in the ERRA balancing account, up to four times its share of the interim standstill agreement cost entered into with Peabody as of December 29, 2005 as standstill costs.
4. SCE is authorized to record standstill costs in the ERRA until December 31, 2006.
5. Recovery of standstill cost is subject to Commission review in SCE's annual ERRA reasonableness of operations proceeding.

6. To recover standstill agreement costs in rates, SCE must demonstrate that, while the standstill agreement was in effect, SCE exercised reasonable due diligence and negotiated in good faith to modify the pollution control requirements.
7. The Natural Resources Defense Council's protest is denied.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on April 13, 2006; the following Commissioners voting favorably thereon:

---

STEVE LARSON  
Executive Director



March 14, 2006

RESOLUTION E-3981  
Commission Meeting April 13, 2006

TO: PARTIES TO SOUTHERN CALIFORNIA EDISON ADVICE LETTER NO  
1952-E.

Enclosed is draft Resolution Number E-3981 of the Energy Division. It will be on the agenda for the April 13, 2006 Commission meeting, which is held at least 30 days after the date of this letter. The Commission may then vote on this Resolution or it may postpone a vote until later.

When the Commission votes on a draft Resolution, it may adopt all or part of it as written, amend, modify or set it aside and prepare a different Resolution. Only when the Commission acts does the Resolution become binding on the parties.

Parties may submit comments on the draft Resolution.

An original and two copies of the comments, with a certificate of service, should be submitted to:

Jerry Royer  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
[jjr@cpuc.ca.gov](mailto:jjr@cpuc.ca.gov)

A copy of the comments should be submitted to:

K. Jerry Oh  
Energy Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
Fax: 415-703-2200

[joh@cpuc.ca.gov](mailto:joh@cpuc.ca.gov)

Any comments on the draft Resolution must be received by the Energy Division by March 30, 2006. Those submitting comments must serve a copy of their comments on 1) the entire service list attached to the draft Resolution, 2) all Commissioners, and 3) the Director of the Energy Division, on the same date that the comments are submitted to the Energy Division.

Comments shall be limited to five pages in length plus a subject index listing the recommended changes to the draft Resolution, a table of authorities and an appendix setting forth the proposed findings and ordering paragraphs.

Comments shall focus on factual, legal or technical errors in the proposed draft Resolution. Comments that merely reargue positions taken in the advice letter or protests will be accorded no weight and are not to be submitted.

Replies to comments on the draft resolution may be filed (i.e., received by the Energy Division) on April 6, 2006, five business days after comments are filed, and shall be limited to identifying misrepresentations of law or fact contained in the comments of other parties. Replies shall not exceed five pages in length, and shall be filed and served as set forth above for comments.

Late submitted comments or replies will not be considered.

Gurbux Kahlon  
Program Manager  
Energy Division

Enclosure: Certificate of Service  
Service List

## **CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of Draft Resolution E-3981 on all parties in these filings or their attorneys as shown on the attached list.

Dated March 14, 2006 at San Francisco, California.

---

Honesto Gatchalian

## **NOTICE**

Parties should notify the Energy Division, Public Utilities Commission, 505 Van Ness Avenue, Room 4002 San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the Resolution number on the service list on which your name a

Akbar Jazayeri  
Director of Revenue and Tariffs  
Southern California Edison Company  
2244 Walnut Grove Avenue  
Rosemead, California 91770  
[AdviceTariffManager@sce.com](mailto:AdviceTariffManager@sce.com)

R. Mark Pocta  
Program Manager  
Division of Ratepayer Advocates  
California Public Utilities Commission  
[RMP@cpuc.ca.gov](mailto:RMP@cpuc.ca.gov)

Jody London Consulting  
Natural Resources Defense Council  
P.O. Box 3629  
Oakland, California 94609